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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-187179

DATE: February 22, 1977

MATTER OF:

Loral Electronic Systems Division, Loral Corporation

DIGEST:

Protest against alleged improper sole-source procurement of equipment for F-16 aircraft is premature, since Air Force states that equipment now being procured under contract option is not for use in F-16, and that any procurements for F-16 will be initiated in future. Objection to Air Force's exercise of current contractor's option is untimely, because protester was advised of Air Force's intentions in August 1976 but failed to diligently pursue matter and filed protest with GAO more than 3 months later.

On November 9, 1976, Loral Electronic Systems Division of Loral Corporation (Loral) protested to our Office against the Department of the Air Force's "* * * AWARD OF A CONTRACT FOR PRODUCTION OF THE COMPASS SAIL FOR INSTALLATION IN F-16 AIRCRAFT * * *" to any concern other than Loral. The protester alleged that through exercise of an option in contract No. F09603-75-C-4272, the Air Force was improperly attempting to make a sole-source award to the Dalmo Victor Company (DV) without giving consideration to Loral's unsolicited proposal.

The record indicates that the Air Force had awarded contracts to DV and Loral in February 1975 for early production units. Each contract contained an option for a production quantity of 400 units. Both contractor's early production units were found to be acceptable, and by letter dated August 4, 1976, the Air Force advised Loral that:

"* * * [T]he contractor selected for production phase, if option is exercised, is Dalmo Victor as this firm submitted the low price for said phase.

* * * * *

"Additional information and/or debriefing on this program may be requested from the contracting officer."

The Air Force believes Loral's protest as to the 400 option units is untimely, because is was not filed within 10 working days after the basis for protest was known or should have been known, as required by our Office's Bid Protest Procedures (4 C.F.R. 20.2(b)(2) (1976)). Further, the Air Force states that its intention was and is to use the 400 units only in F-4, A-7 and A-10 aircraft--not in F-16 aircraft. As regards units for the F-16 aircraft, the Air Force states that future procurements are planned but that the present protest is premature.

In regard to the F-16 aircraft requirements, Loral has contended that the contracting officer has admitted that a $143,000 modification is being made to DV's contract to reconfigure the units for the F-16. However, the contracting officer's statement on this point clearly appears to be a hypothetical discussion of the effect of such a modification, in response to arguments raised in Loral's protest. Elsewhere in the record, the contracting officer and other Air Force officials unequivocally state that there is no intention to install any of the 400 units in the F-16. The Air Force also denies Loral's allegation that the quantity being obtained under the contract option is being increased from 400 to 1,000 units. Accordingly, we believe that all of Loral's arguments concerning F-16 applications are premature. Loral will have the opportunity to raise its objections as and when the Air Force initiates procurements of units for the F-16.

Concerning the 400 option quantity itself, Loral contends that it learned for the first time from the Air Force's January 11, 1977, report to our Office that the contracting officer erroneously evaluated the prices prior to the August 1976 determination to select DV as the prospective optionee. In this regard, in Graphics, Communications Systems, Inc., B-186715, July 27, 1976, 76-2 CPD 75, we dismissed a protest for failure to state any grounds of protest and further stated:

> "In any event, we do not believe that the firm has diligently pursued the matter. While the firm did not know the exact basis for its not receiving an award, it was advised that awards had been made to other firms at specific prices. Rather than to inquire immediately or within a reasonable period of time as to why it had not, or to protest the fact that it had not, received award, GCS chose to wait over 2 months before inquiring of the Department

> of Labor as to what had occurred. Having received no answer, the firm addressed our Office almost 4 months after the advice that it had not been chosen for an award.
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> "Therefore, any subsequent protest to our Office would be considered as untimely filed and not for consideration under our Bid Protest Procedures (4 C.F.R. part 20 (1976)). In this regard, 4 C.F.R. § 20.2 requires the filing of protests with the agency or our Office within 10 days after the basis of protest 'should have been known.'"

The same principle is for application here. We note that Loral was not simply a disappointed bidder, but a contractor in line for a possible exercise of its option. Also, the Air Force's August 4, 1976, letter to Loral specifically offered to provide additional information and/or a debriefing. Since it failed to diligently pursue the matter, Loral's November 9, 1976, protest to our Office is untimely, nor can information obtained as a result of filing a premature protest involving F-16 applications furnish the basis for a timely objection to the Air Force's August 1976 determination of which contractor's option was to be exercised.

Loral also contends that it first learned in November 1976 that the 90-day period for exercising the DV option had expired. Subsequently, Loral contended that an agreement between the Air Force and DV to extend the period from 90 to 240 days may have constituted inequitable treatment to Loral. However, we fail to see how this relates to the propriety of the August 1976 Air Force decision to select DV as the prospective optionee. Given that decision, not objected to in a timely manner by Loral, it would appear that the extension in the period for exercising the option is a matter of contract administration for resolution between the Air Force and DV.

Loral further suggests that in producing the 400 option units DV will be obtaining experience giving it an unfair competitive advantage in future procurements. In this connection, Loral alleges that it became aware for the first time through the Air Force's report that the Air Force intended to have only one compass sail configuration in its inventory. However, we believe that a contractor in Loral's position should reasonably be charged with knowledge that exercise of

a competitor's option might result in the competitor's gaining advantageous production experience. Further, we note that the option in both Loral's and DV's contracts included not only the production of 400 units, but also the furnishing of reprocurement data. In this light, if Loral had reason to believe that some unfair competitive advantage would accrue to DV, it should have raised this objection when the contract was awarded to DV in February 1975, or at the very latest when it was notified in August 1976 that DV had been selected as the prospective optionee. Similarly, Loral's concern that exercise of DV's option would improperly result in only one competitive sail configuration is a matter which should have been pursued with the Air Force in a timely manner. To the extent that these objections may relate to future procurements, they are premature.

Finally, the Air Force has suggested that Loral's protest should be dismissed because the exercise of an option is a matter of contract administration, citing Murdock Machine and Engineering Co. of Utah, B-183098, February 13, 1975, 75-1 CPD 98. Since Loral's protest as to the option exercise in the present case is untimely, we do not believe that it is necessary to give further consideration to this issue. Similarly, we do not find it necessary to consider the arguments in DV's February 9, 1977, letter to our Office that Loral lacks "standing" to protest and that the protester's position on the substantive issues is without merit.

In view of the foregoing, the protest is dismissed.

Paul G. Dembling
General Counsel